•• REMARKS/ARGUMENTS ••

The Official Action of March 29, 2004 has been thoroughly studied. Accordingly, the changes presented herein for the application, considered together with the following remarks, are believed to be sufficient to place the application into condition for allowance.

By the present amendment, independent claim 1 has been changed to delete the reference to "component fibers" which lacked antecedent basis in the claims.

In addition, claim 2 has been changed to require some (more that 0%) homopolymer. This change has been made in response to the Examiner's indication that applicants' claim 2 allowed for 0% of homopolymer.

New claim 7 has been added which requires that the mixture of polyolefin blends is at 100% by weight.

Entry of the changes to the claims is respectfully requested

Claims 1-3, 6 and 7 are pending in this application.

Claims 1-3 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,681,645 to Strack et al. in view of U.S. Patent No. 5,116,662 to Morman.

Claims 1-3 stand provisionally rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claims 1-30 of copending Application No. 09/613,814 in view of Morman.

Claim 6 stands rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,372,067 to Kobayashi et al.

Claim 6 stands rejected under the judicially created doctrine of obvious-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,531,014 to Kobayashi et al.

For the reasons set forth below, it is submitted that each of the pending claims is allowed over the prior art and pending applications relied upon by the Examiner, and therefore each of the outstanding rejections should properly be withdrawn.

Favorable reconsideration by the Examiner is respectfully requested.

In response to the rejections of claims 1-3 and 6 that are based upon the judicially created doctrine of obviousness-type double patenting, applicants would like to advise the Examiner that they are in the process of preparing a Terminal Disclaimer in which the terminal portion of any patent issuing from the present application that would extend beyond the term of any patent issuing from copending Application No. 09/613,814 or U.S. Patent No. 6,372,067 to Kobayashi et al. or U.S. Patent No. 6,531,014 to Kobayashi et al. will be disclaimed.

The Terminal Disclaimer will be filed in due course and the Examiner is requested to hold the obviousness-type double patenting rejections in abeyance until the Terminal Disclaimer is submitted.

The Terminal Disclaimer will remove the outstanding rejection of claims 1-3 and 6 that are based upon the judicially created doctrine of obviousness-type double patenting.

Claims 1-3 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Strack et al. in view of Morman.

Under this rejection the Examiner has relied upon Strack et al. as teaching:

> ...a laminate material comprising a non-woven web elastomeric web having at least one web of textile material discontinuously bonded to each side (Abstract).

The Examiner states that Strack et al. "describes the laminate with at least two textile webs, a non-elastic textile web with stretch and recovery characteristics, and a textile web with non-woven elastomeric web properties (column 5, line 58-67)."

The Examiner notes that Strack et al. describes various kinds of elastomeric web material "such as HYREL." The Examiner further notes that applicants' claimed invention only requires that the elastic sheet be stretchable in at least one of the two directions that are orthogonal to each other and therefore, HYTEL meets the elongation requirements of the claims.

The Examiner has further relied upon Strack et al. as using an adhesive to laminate the webs together.

The Examiner concedes that Strack et al. fails to teach that the component fibers of the sheet having inelastic stretchability comprise ethylene/propylene copolymer containing ethylene at 0.5 – 10% by weight, ethylene/propylene/butene containing ethylene at 0.5 – 10% by weight and butene at 0.5 – 15% by weight, or a mixture thereof at 100 -10% by weight.

The Examiner has accordingly relied upon Morman as describing a multi-directional stretch composite elastic material comprising at least one sheet which is stretched and one necked (non-elastic) material, which are joined together in at least three locations.

The Examiner noted that Morman describes that "the non-elastic materials are nonwovens made of polyolefins and similar polymer including ethylene copolymers, propylene copolymers and butene copolymers (column 4, lines 44 – 64)."

In combining the teachings of Strack et al. and Morman the Examiner takes the position that:

> It would have been obvious…to create the non-elastic textile web of Strack with the copolymer combination of Morman motivated by the desire to improve resilience, stretch and recovery of the composite.

On page 6 of the Official Action the Examiner concedes that the combination of Strack et al. and Morman fails to teach that the inelastic material comprises ethylene/propylene copolymer containing ethylene at 0.5 – 10% by weight, ethylene/propylene/butene containing ethylene at 0.5 – 10% by weight and butene at 0.5 – 15% by weight, or a mixture thereof at 100 -10% by weight.

Nevertheless the Examiner has relied upon the holding in *In re Boesch* as supporting the Examiner's position that "one would have been motivated to optimize the amounts of ethylene or the amounts of ethylene and butene in order to have a properly strong and resilient composite web." (*In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

The Examiner is invited to review the Board of Patent Appeals and Interferences opinion in *Ex parte Roland Barth* (Appeal No. 1998-0982; Application No. 08/399,715) (http://www.uspto.gov/web/offices/dcom/bpai/decisions/fd980982.pdf). In *Barth*, the Board cited *Boesch*, noting that the optimization referred to in *Boesch* is the optimization of a known parameter or "effective variable in a known process." The Board stated that "…in all authorities known to us, the optimization relates to a range or variable."

In the present situation, the Examiner has not relied upon any prior art that teaches any specific manner of adjusting or optimizing the laminates of Strack et al. by using applicants' specific blends of copolymers in the claimed ranges, i.e., ethylene/propylene copolymer containing ethylene at 0.5 – 10% by weight, ethylene/propylene/butene containing ethylene at 0.5 – 10% by weight and butene at 0.5 – 15% by weight, or a mixture thereof at 100 -10% by weight as the non-elastic textile sheet in Strack et al.

It is important to note that Morman completely fails to teach any example amounts of ethylene and butene that could be used. This evidences a total lack of any appreciation as to any "effect" varying the percentages of these components could have on the resulting textile of Morman.

It is further noted that Morman's "necked material" that is made of polyolefins is actually taught to be a component of elastic materials. In this regard, reference is made to the Examiner's reliance upon U.S. Patent No. 4,663,220 to Wisneski et al. on page 5 of the Official Action of October 9, 2003. The Examiner specifically stated that:

> Regarding the composition of the ethylene copolymer Morman describes blends of polyolefin material which is incorporated by reference in 4,663,220..., which were blended under appropriate conditions,....one of ordinary skill in the art would be able to optimize the amounts of the ethylene propylene butene copolymers to join the two layers.

In Wisneski et al. (US Pat. 4,663,220) the percentages of the polyolefin copolymers was determined for elastomeric materials such as elastomeric films and elastomeric fibrous nonwoven webs.

Accordingly, based upon: 1) the lack of any concrete examples in Morman; 2) the lack of any evidence as to how varying the percentages of the polyolefins of Morman and incorporating them in to Strack et al. would improve the resulting laminates; and 3) the showing by Wisneski et al. that the polyolefins of Morman can be varied for use as elastomeric materials, it is submitted that the Examiner cannot simply cite and rely upon *In re Boesch* as supporting the Examiner's position that it would have been obvious to optimize the amounts of ethylene and butene in the combination of Strack et al. and Morman.

Neither Morman nor Wisneski et al. teach a blend of polyolefins for used in non-elastic materials.

Accordingly, it is submitted that the holding in *In re Boesch* is not applicable to the present situation and the basis for the Examiner's determination of obviousness therefore lacks legal support.

It is further noted that the prior art does not teach the limitation in applicants' independent claim 1 that requires that after the fibrous assembly is bonded to the elastic sheet the resulting composite is stretched so as to change the dimensions of the fibers in the fibrous assembly and the elastic stretchability of the composite sheet.

Note that Morman, upon which the Examiner has relied upon as teaching the use of polyolefins, stretches both the neckable material and the elastic sheet before they are bonded together, and does not teach subsequent stretching that changes the dimensions of the fibers in the neckable material or the elastic stretchability of the composite.

Strack et al. also fails to teach subsequent stretching of the composite that changes the dimensions of the fibers in the nonelastic material or the elastic stretchability of the composite.

Based upon the above distinctions between the prior art relied upon by the Examiner and the present invention, and the overall teachings of prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon prior art would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejections of the claims should hence be withdrawn.

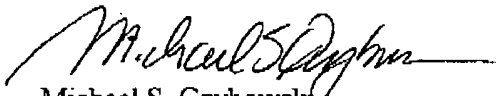
Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the Official Action and reconsideration is requested.

If upon consideration of the above, the Examiner should feel that there remains outstanding issues in the present application that could be resolved, the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit account.

Respectfully submitted,



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